

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
SR-6J

April 19, 2011

Mr. John Vasi
1012 Clearview Ave.
Akron, OH 44314

Re: Summit National Superfund Site, Portage County, Ohio

Dear Mr. Vasi:

As you know, the consent decree governing the implementation of the remedial action at the Summit National Superfund site (*United States v. John Vasi, et al.*, Civil Action No. C81-1961) identified the eventual necessity for deed restrictions on the site property owned by you as one component of the remedial action. The description of the necessary deed restrictions was delineated in Section V.D.3. of the consent decree; the restrictions included prohibitions against filling, grading, excavating, building, drilling, mining, farming, or other development of the property without the prior written consent of the U.S. Environmental Protection Agency (U.S. EPA). Also, with respect to groundwater or surface water, the restrictions included no extraction, development, or use of groundwater or surface water at the site without the prior written consent of the U.S. EPA. While the terms of the consent decree did not require the recording of the deed restrictions until such time as you transferred your interest in the property, the consent decree itself--including the restrictions delineated in Section V.D.3.--was recorded soon after the consent decree was entered in 1990.

In order to determine whether the remedy at a site remains protective of human health and the environment--both in the short term and long term--the U.S. EPA conducts five-year reviews of sites where hazardous substances remain onsite. In its most recent five-year review report regarding the Summit National site, dated August 25, 2008, the U.S. EPA discussed whether the deed restrictions contained in the consent decree that was recorded in the early 1990s was sufficient to ensure that the institutional-control component of the remedial action remains fully protective of human health and the environment.


U.S. EPA has concluded that the currently recorded consent decree does not satisfy Ohio requirements for an environmental covenant or easement, because the document does not identify a grantee endowed with the right to enforce the restrictions delineated in Section

V.D.3. of the document. Because of the enforceability issues surrounding the currently recorded consent decree, the U.S. EPA has enclosed with this letter an environmental covenant for the Summit National site that comports with Ohio Revised Code §§ 5301.80 to 5301.92. This covenant, when recorded, will run with the land and be enforceable by the U.S. EPA.

The U.S. EPA requests that you review the enclosed document carefully, and return the document, with your notarized signature, to me for U.S. EPA's final approval and signature. I will then return a fully-signed original of the document to you for recording with the Portage County Recorder's Office.

Institutional controls, such as the enclosed environmental covenant, are an important component of the remedial action, and necessary to achieve and maintain the performance standards of the remedial action and the effectiveness of the remedy. For this reason, I urge you to give this letter your prompt attention, and to please contact me at 312-353-2886 if you have any questions about this letter or the enclosed environmental covenant.

Sincerely,


Pablo Valentin
Remedial Project Manager

Enclosure

cc: James Morris, ORC
Summit National File

My Phone No. is 330-745-3296

I don't believe this was intended
for me - my name is John Vasi -
could it be another John Vasi?
call me if you wish -

Some many years ago - Cleveland
Plain Dealer - carried my name on front
page - work mates called it to my attention.
Something similar to this letter.

John Vasi

330-745-3296

I own some Akron City Property on Clearview

Date

ENVIRONMENTAL COVENANT

This Environmental Covenant is made as of the ____ day of _____, 2011, by and among Owner John Vasi (as further identified below) and Holder, John Vasi (as further identified below) pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Site (described below) to the activity and use limitations and to the rights of access described below.

Whereas, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, the United States Environmental Protection Agency ("EPA"), placed the Summit National Superfund Site ("Site") on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the *Federal Register* on September 15, 1983; and

Whereas, in a Remedial Action/Feasibility Study (RI/FS) completed on June 30, 1988, EPA found the following contaminants had been released into the soil and sediment at the Site: methylene chloride, acetone, carbon disulfide, 1,1-dichloroethene, 1,1-dichloroethane, trans-1,2-dichloroethene, 1,2-dichloroethane, 2-butanone, 1,1,1-trichloroethane, trichloroethene, benzene, 4-methyl-2-pentanone, tetrachloroethene, toluene, chlorobenzene, ethylbenzene, xylenes, phenol, 1,4-dichlorobenzene, 1,2-dichlorobenzene, isophorone, 1,2,4-trichlorobenzene, naphthalene, 2-methylnaphthalene, fluorine, hexachlorobenzene, phenanthrene, di-n-butylphthalate, butylbenzylphthalate, bis-2-ethylhexylphthalate, di-n-octylphthalate, indeno(1,2,3-c,d)pyrene, dibenz(a,h)anthracene, benzo(g,h,i)perylene, 4,4-DDT, PCBs, n-nitrosodiphenylamine, arsenic, barium, beryllium, chromium, copper, mercury, and cyanide. In the same RI/FS, EPA found the following contaminants had been released into the groundwater at the Site: methylene chloride, acetone, 1,1-dichloroethane, 1,2-dichloroethane, 2-butanone, 1,1,1-trichloroethane, trichloroethane, 4-methyl-2-pentanone, toluene, ethylbenzene, 1,1-dichloroethene, 4-methylphenol, 2,4-dimethylphenol, 4-chloro-3-methylphenol, phenol, isophorone, naphthalene, 2-methylnaphthalene, bis-2-ethylhexylphthalate, pyrene, dimethylphthalate, di-n-octylphthalate, acenaphthalene, dibenzofuran, diethylphthalate, trans-1,2-dichloroethene, benzene, xylenes, tetrachloroethene, fluorine, hexachlorobenzene, phenanthrene, anthracene, di-n-butylphthalate, fluoranthene, butylbenzylphthalate, hexachlorocyclopentadiene, aluminum, arsenic, barium, cadmium, chromium, manganese, nickel, tin, and barium. In the same RI/FS, EPA found the following contaminants had been released into the surface water at the Site: methylene chloride, acetone, 1,1-dichloroethane, 1,2-dichloroethane, 2-butanone, 1,1,1-trichloroethane, 4-methyl-2-pentanone, tetrachloroethene, toluene, chlorobenzene, xylenes, phenol, aniline, 1,4-dichlorobenzene, 1,2-dichlorobenzene, hexachloroethane, isophorone, benzoic acid, bis-2-ethylhexylphthalate, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-c,d)pyrene, dibenz(a,h)anthracene, benzo(g,h,i)perylene, arsenic barium, beryllium, cadmium, chromium, and nickel; and

Whereas, EPA issued a Record of Decision (ROD) on June 30, 1988, and whereas EPA issued an amended ROD on November 2, 1990 which called for the expansion of Site boundaries to encompass contaminated areas along the perimeters; construction of fencing around the expanded boundary; excavation and on-Site incineration of contaminated materials; demolition of on-Site structures for on-Site disposal; collection and treatment of surface water; extraction of groundwater; relocation of a vacant residence; testing of incinerated waste material before replacement on Site; regrading and installation of a soil cover; re-routing of drainage ditches; and institutional controls to limit the future use of the property where remedial construction has occurred and to protect the performance of the remedy, and to prevent the exposure of humans or the environment to contaminants; and

Whereas on February 15, 1987, EPA issued a Unilateral Administrative Order to various potentially responsible parties, and on June 11, 1991, a Remedial Action Consent Decree was entered which provided for the implementation of the remedial action selected in the November 2, 1990, ROD, and whereas, with the exception of the institutional controls, the remedial action has been implemented at the Site; and

Whereas, the parties hereto have agreed: 1) to grant a permanent right of access over the Site to the Access Grantees (as hereafter defined) for purposes of implementing, facilitating and monitoring the remedial action, and 2) to impose on the Site activity and Use Limitations as covenants that will run with the land for the purpose of protecting human health and the environment; and

Now therefore, Owner and EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant executed and delivered pursuant to §§ 5301.80 to 5301.92 of the Ohio Revised Code. EPA is the Agency, as defined by ORC 5301.80(B), that approved the environmental response project pursuant to which this environmental covenant is created. Pursuant to ORC 5301.81(B), any right of EPA under this environmental covenant is not an interest in real property.
2. Site. The one (1) parcel of real property which contains 11.5 acres located in Deerfield Township, Portage County, Ohio (the "Site") which is subject to the environmental covenants set forth herein is described on **Exhibit A** attached hereto and hereby by reference incorporated herein. The Site is outlined by heavy black line on the copy of the Portage County, Ohio, Auditor's tax map (the "Map") attached hereto as **Exhibit B**.
3. Owner. John Vasi ("Owner") who resides at 1012 Clearview Avenue, Akron, Ohio, is the owner of the Site. Owner is the Owner Settling Defendant named in the Consent Decree (described in Paragraph 10 below).
4. Holder. John Vasi, whose address appears in Paragraph 3 above.

5. Activity and Use Limitations on the Site.

(a) Owner agrees for himself and his successors in title not to permit the Site to be used in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial action which has been implemented pursuant to the Consent Decree unless the written consent of the EPA to such use is first obtained. Owner's agreement to restrict the use of the Site shall include, but not be limited to, not permitting any filling, grading, excavating, building, drilling, mining, farming or other development on property on the Restricted Area unless the written consent of EPA to such use or activity is first obtained.

(b) Owner covenants for himself and his successors and assigns that there shall be no consumptive use of Site groundwater, including use, extraction, or development of said groundwater, either on or off the Site, until cleanup standards are achieved.

(c) Owner covenants for himself and his successors and assigns that there shall be no use of surface water contained within the Site for any purpose.

(d) Owner covenants for himself and his successors and assigns that there shall not be any inconsistent uses on the Site that will interfere with remedial action components or otherwise harm the integrity of the remedy components.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Site or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Requirements for Notice to EPA Following Transfer of a Specified Interest in, or Concerning Proposed Changes in the Use of, Applications for Building Permits for, or Proposals for any Work Affecting Contamination on the Site. Neither Owner nor any Holder shall transfer any interest in the Site or make proposed changes in the use of the Site, or make applications for building permits for, or proposals for any work in the Site without first providing notice to EPA and obtaining any approvals or consents thereto that are required under the Consent Decree.

8. Access to the Site. Pursuant to Section V of the Consent Decree, Owner agrees that EPA and the Settling Defendants, their successors and assigns, and their respective officers, employees, agents, contractors and other invitees (collectively, "Access Grantees") shall have and hereby grants to each of them an unrestricted right of access to the Site to undertake the Permitted Uses described in Paragraph 9 below and, in connection therewith, to use all roads, drives and paths, paved or unpaved, located on the Site or off the Site ("off-site") and rightfully used by Owner and Owner's invitees for ingress to or egress from portions of the Site (collectively, "Access Roads"). The right of access granted under this Paragraph 8 shall be

irrevocable while this Covenant remains in full force and effect. The Settling Defendants are named on **Exhibit C** attached hereto.

9. Permitted Uses. The right of access granted under Paragraph 8 of this Environmental Covenant shall provide Access Grantees with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to the Consent Decree or the purchase of the Site, including, but not limited to, the following activities:

- a) Monitoring the Work;
- b) Verifying any data or information submitted to the United States or the State;
- c) Conducting investigations relating to contamination at or near the Site;
- d) Obtaining samples;
- e) Assessing the need for, planning, or implementing response actions at or near the Site;
- f) Implementing the Work pursuant to the Consent Decree;
- g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner or his agents, consistent with Section XV (Retention and Availability of Information) of the Consent Decree;
- h) Assessing Settling Defendants' compliance with the Consent Decree;
- i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted or that may need to be prohibited or restricted by or pursuant to the Consent Decree; and
- j) Surveying and making soil tests of the Site, locating utility lines, and assessing the obligations which may be required of a prospective purchaser by EPA under the Consent Decree.

10. Administrative Record. Copies of the EPA administrative record for the Summit National Superfund Site are maintained at the following locations: **EPA Region 5, Superfund Records Center (7th Floor), 77 W. Jackson Blvd., Chicago, Illinois 60604; [Union Township Library, 7900 Cox Road, West Chester, Ohio 45069; and Union Township Hall, 9113 Cincinnati-Dayton Road, West Chester, Ohio 45069].**

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Site or any portion of the Site shall contain a notice of the activity and use limitations, and grants of access set forth in the Environmental Covenant, and provide the

recorded location of this Environmental Covenant. For instruments conveying any interest in the Site or any portion thereof, the notice shall be substantially in the form set forth in **Exhibit D**.

12. Amendments; Early Termination. This Environmental Covenant may be modified or amended or terminated while Owner owns the property only by a writing signed by Owner and EPA with the formalities required for the execution of a deed in Ohio which is recorded in the Office of the Recorder of Portage County, Ohio. Upon transfer of all or any portion of the Site, Owner waives any rights that he might otherwise have under Section 5301.90 of the ORC to withhold his consent to any amendments, modifications, or termination of this Environmental Covenant, to the extent that he has transferred his interest in that portion of the Site affected by said modification, amendment or termination. The rights of Owner's successors in interest as to a modification, amendment or termination of this Environmental Covenant are governed by the provisions of Section 5301.90 of the ORC.

13. Other Matters.

- (a) Representations and Warranties of Owner. Owner represents and warrants; that Owner is the sole owner of the Site; that Owner holds fee simple title to the Site, which is free, clear, and unencumbered except for the Consent Decree; that Owner has the power and authority to make and enter into this Agreement as Owner and Holder, to grant the rights and privileges herein provided and to carry out all obligations of Owner and Holder hereunder; that this Agreement has been executed and delivered pursuant to the Consent Decree; and that this Agreement will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.
- (b) Right to Enforce Agreement Against Owner; Equitable Remedies. In the event that Owner or any other person should attempt to deny the rights of access granted under Paragraph 8 or should violate the restrictions on use of the Site set forth in Paragraph 5, then, in addition to any rights which EPA may have under the Consent Decree, EPA or any Settling Defendant that is adversely affected by each denial (for example, any Settling Defendant that is prevented from conducting its remedial obligations under the Consent Decree) or by such violation shall have the right to immediately seek an appropriate equitable remedy and any court having jurisdiction is hereby granted the right to issue a temporary restraining order and/or preliminary injunction prohibiting such denial of access or use in violation of restrictions upon application by EPA or by such adversely affected Settling Defendant without notice or posting bond. Owner and each subsequent owner of the Site by accepting a deed thereto or to any part thereof waives all due process or other constitutional right to notice and hearing before the grant of a temporary restraining order and/or preliminary injunction pursuant to this Subsection 13(b).

- (c) Future Cooperation; Execution of Supplemental Instruments. Owner agrees to cooperate fully with EPA and/or the Settling Defendants and to assist them in implementing the rights granted them under this Environmental Covenant and, in furtherance thereof, agrees to execute and deliver such further documents as may be requested by EPA to supplement or confirm the rights granted hereunder.
- (d) Cumulative Remedies; No Waiver. All of the rights and remedies set forth in this Environmental Covenant or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of, or exclusion of, any other right, remedy or option available hereunder or under the Consent Decree or at law. The failure to exercise any right granted hereunder, to take action to remedy any violation by Owner of the terms hereof or to exercise any remedy provided herein shall not be deemed to be a waiver of any such right or remedy and no forbearance on the part of EPA and no extension of the time for performance of any obligations of Owner hereunder shall operate to release or in any manner affect EPA's rights hereunder.
- (e) Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- (f) Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Site, with the Portage County Recorder's Office.
- (g) Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Site with the Portage County Recorder.
- (h) Distribution of Environmental Covenant/Other Notices. The Owner shall distribute a file-stamped and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, Portage County, each person holding a recorded interest in the Site, and the Settling Defendants. All notices, requests, demands or other communications required or permitted under this Environmental Covenant shall be given in the manner and with the effect set forth in the Consent Decree.
- (i) Notices – All notices, requests, demands or other communications required or permitted under this Environmental Covenant shall be given in the manner and with the effect set forth in the Consent Decree.

- (j) Governing Law. This Environmental Covenant shall be construed according to and governed by the laws of the State of Ohio and the United States of America.
- (k) Captions. All paragraph captions are for convenience of reference only and shall not affect the construction of any provision of this Environmental Covenant.
- (l) Time of the Essence. Time is of the essence of each and every performance obligation of Owner under this Environmental Covenant.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Owner and EPA have executed and delivered this Environmental Covenant as of the date first above written.

OWNER

John Vasi

STATE OF OHIO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by John Vasi.

Notary Public

Exp.: _____

IN WITNESS WHEREOF, Owner and EPA have executed and delivered this Environmental Covenant as of the date first above written.

UNITED STATES OF AMERICA
On behalf of the Administrator of the
United States Environmental Protection Agency

By: _____
Douglas Ballotti, Acting Director,
Superfund Division, Region 5

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Douglas Ballotti, Acting Director, Superfund Division, Region 5 of the United States Environmental Protection Agency, on behalf of the United States of America.

Notary Public
Exp: _____

EXHIBIT A

Legal Description of the Site

EXHIBIT B

Porter County, Ohio, Auditor's Tax Map of the Site

EXHIBIT C

List of Settling Defendants

EXHIBIT D

Notice Upon Conveyance of Site or any Portion Thereof

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A CONSENT DECREE DATED JUNE 11, 1991, WHICH WAS RECORDED IN THE OFFICE OF THE PORTAGE COUNTY RECORDER, OR BOOK _____, Pages _____, AND WHICH RESTRICTS THE INTEREST CONVEYED AS SET FORTH IN THIS NOTICE AND AN ENVIRONMENTAL COVENANT, DATED _____, 2011, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE PORTAGE COUNTY RECORDER ON _____, 2011, in BOOK _____, Pages _____, THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS AND ACCESS RIGHTS:

Activity and Use Limitations on the Site.

- (a) The Site shall not be used in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial action which has been implemented or which will be implemented pursuant to the Consent Decree unless the written consent of the EPA to such use is first obtained.
- (b) There shall be no consumptive use of Site groundwater, including use, extraction, or development of said groundwater, either on or off the Site, until cleanup standards are achieved.
- (c) There shall be no use of surface water contained within the Site for any purpose.
- (d) There shall not be any inconsistent uses on the Site that will interfere with other remedial action components or otherwise harm the integrity of the remedy components

Access to the Site. Pursuant to Sections V and X of the Consent Decree and the Environmental Covenant, EPA and the Settling Defendants, their successors and assigns, and their respective officers, employees, agents, contractors and other invitees (collectively, "Access Grantees") shall have an unrestricted right of access to the Site to undertake the Permitted Uses described below and, in connection therewith, to use all roads, drives and paths, paved or unpaved, located on the Site or off the Site ("off-site"). The right of access set forth above shall be irrevocable while the Environmental Covenant remains in full force and effect. The Settling Defendants are named in **Exhibit C** of the Environmental Covenant.

Permitted Uses. The right of access granted under the Environmental Covenant shall provide Access Grantees with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to the Consent Decree or the purchase of the Site, including, but not limited to, the following activities:

- a) Monitoring the Work;

- b) Verifying any data or information submitted to the United States or the State;
- c) Conducting investigations relating to contamination at or near the Site;
- d) Obtaining samples;
- e) Assessing the need for, planning, or implementing response actions at or near the Site;
- f) Implementing the Work pursuant to the Consent Decree;
- g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner or his agents, consistent with Section XV (Retention and Availability of Information) of the Consent Decree;
- h) Assessing Settling Generator/Transporter Defendants' compliance with the Consent Decree;
- i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted or that may need to be prohibited or restricted by or pursuant to the Consent Decree; and
- j) Surveying and making soil tests of the Site, locating utility lines, and assessing the obligations which may be required of a prospective purchaser by EPA under the Consent Decree.
- k) Enforcing and maintaining compliance with the Environmental Covenant.